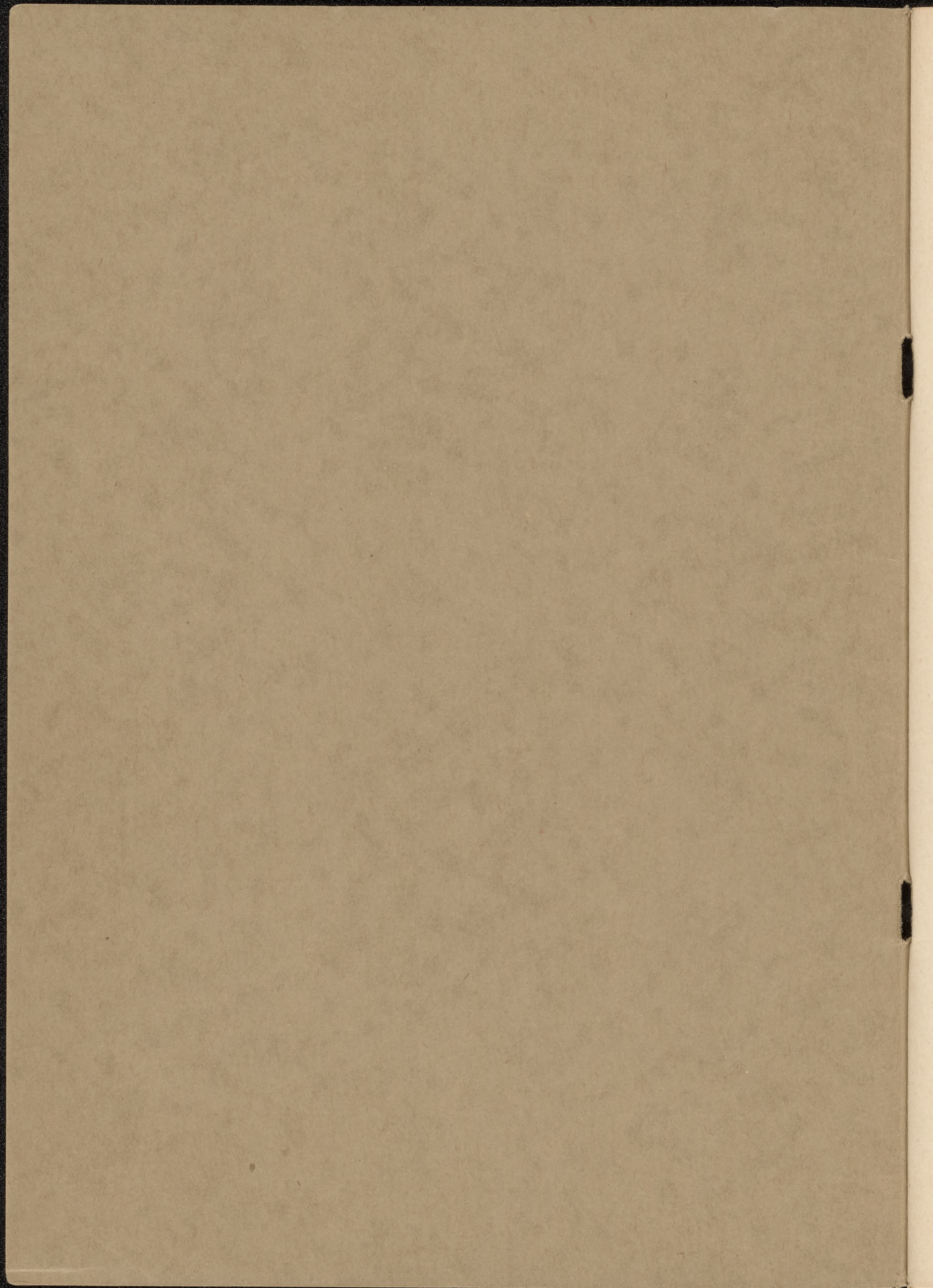
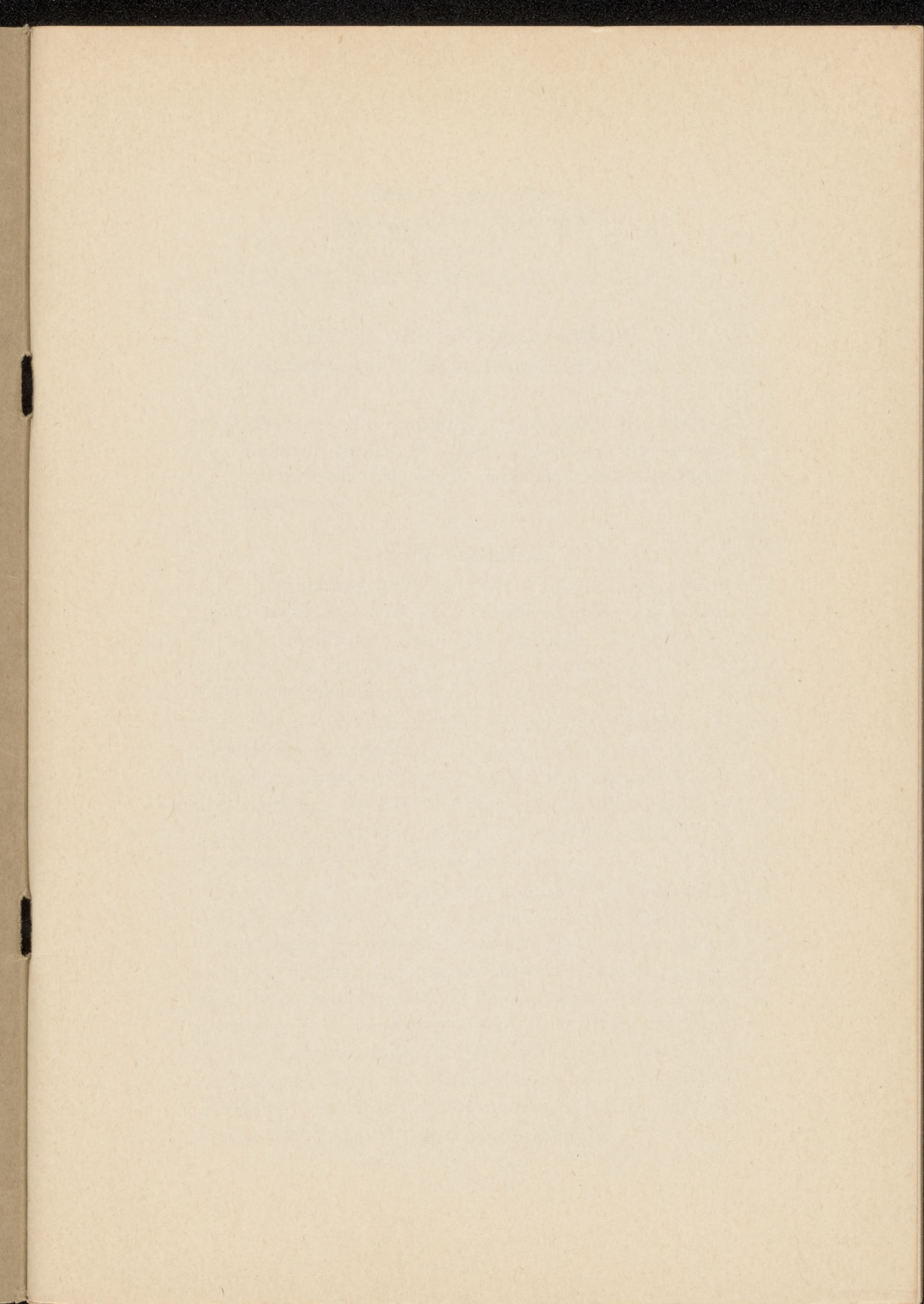
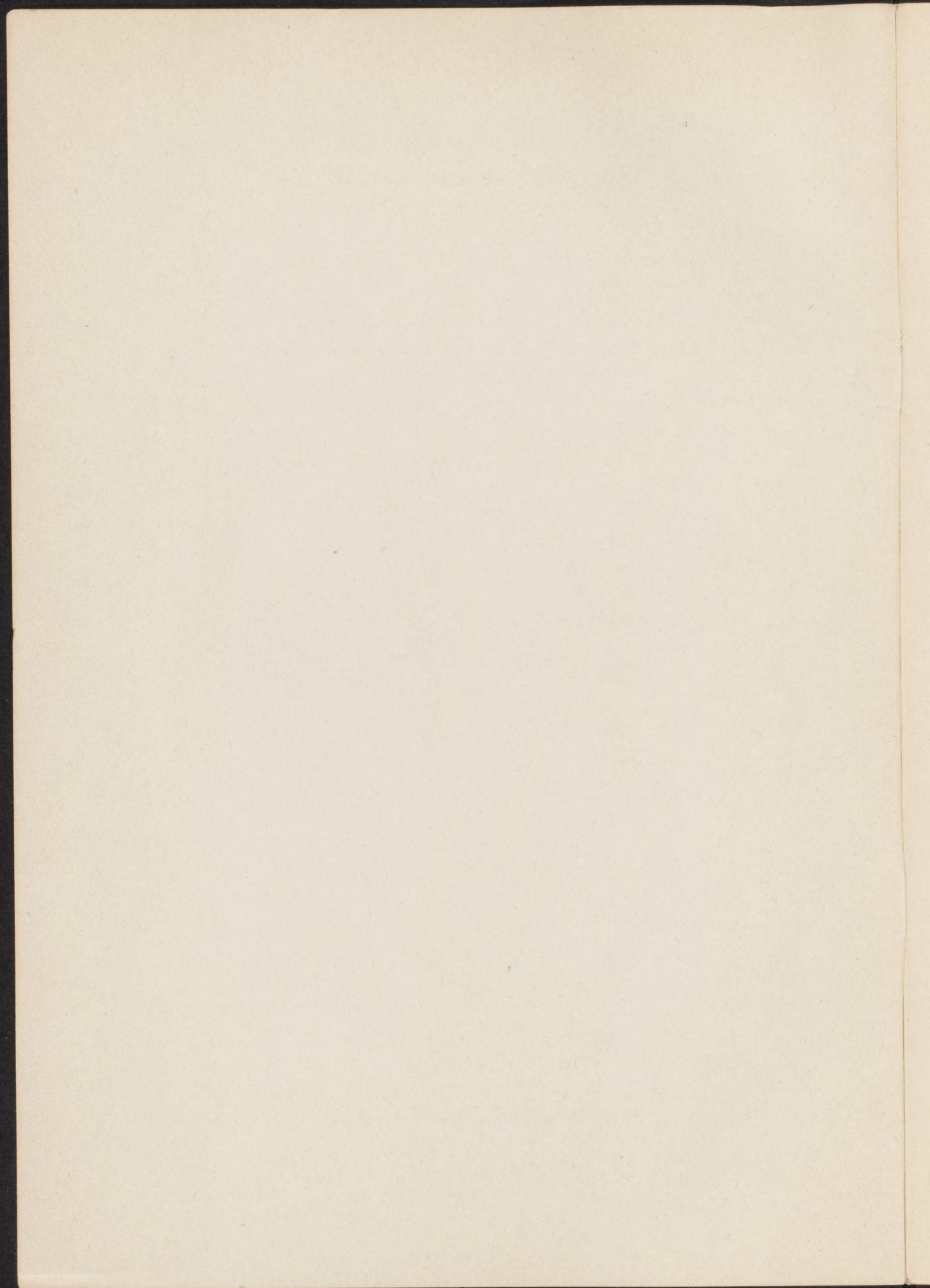


Memorandum Re
The Statutory Agreement
Between
THE UNITED STATES OF AMERICA
and
THE STATE OF CALIFORNIA
Relating to the Waters of the Colorado River
and
The Effect of the Pending Treaty with the United
Mexican States on Such Statutory Agreement
and on California Water Delivery Contracts Made
Thereunder.

JAMES H. HOWARD,
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The Metropolitan Water District
of Southern California.
306 West Third Street, Los Angeles,







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Points Submitted.

1. The pending treaty with the United Mexican States would constitute a breach of the Statutory Agreement between the United States and the State of California, evidenced by the Boulder Canyon Project Act and the California Limitation Act.

2. Water delivery contracts of the United States, executed by the Secretary of the Interior with water users in California, under authority of the Boulder Canyon Project Act, are not, by reason of reference to the Colorado River Compact, or otherwise, subject to agreed diminution to accommodate a treaty with Mexico.

3. As against such diminution the California water delivery contracts are firm, not only as to 4,400,000 acre feet of water apportioned by Article III(a) of the Colorado River Compact, but as to one-half of excess or surplus water unapportioned by the Compact. Such excess or surplus is to be measured in the light of the language of the Boulder Canyon Project Act and the Statutory Agreement between the United States and the State of California, that is, without extension of the benefits of storage at Boulder to the service of Mexico.

I.

Introduction.

In the year 1929 the State of California completed a bargain with the United States, the transaction being evidenced by (a) the Boulder Canyon Project Act (Note 1), and (b) the California Limitation Act (Note 2).

Copies of the pertinent parts of the documents involved appear in the appendix hereto.

The Project Act, as a condition precedent to the taking effect of the Act, required California (in the absence of a seven-state Colorado River Compact), in consideration of the passage of the Project Act, to limit its use of Colorado River water in a prescribed manner. California, in consideration of the passage of the Project Act, and in strict compliance with its terms, made the required agreement by adopting the California Limitation Act. The result is a contract or compact between the United States and California which will be herein referred to as the "Statutory Agreement."

California, concurrently with the adoption of the Limitation Act, ratified the Colorado River Compact, an agreement among six of the states of the Colorado River basin, relating to the waters of the river. (Note 3.)

While, from the California standpoint, the Statutory Agreement was a harsh bargain, dictated by the impera-

Note 1. Boulder Canyon Project Act, approved December 21, 1928, 55 Stats. 774.

Note 2. "An act to limit the use by California of the waters of the Colorado River in compliance with the Act of Congress known as the 'Boulder Canyon Project Act,' approved December 21, 1928, in the event the Colorado River Compact is not approved by all of the states signatory thereto." Approved March 4, 1929; California Stats. 1929, page 38.

Note 3. Colorado River Compact, signed at Santa Fe, New Mexico, November 24, 1922. Approved by Congress December 21, 1928.

tive necessity for flood control on the lower Colorado River, the unwillingness of Arizona to ratify the Compact, and by the opposition of the states of the upper basin to the authorization of the Boulder Dam, yet it is a bargain that California must, and will, honor so long as it be honored by the other party thereto.

The Statutory Agreement so made provided that, in consideration of the passage of the Boulder Canyon Project Act, the State of California, for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming, would limit its use of water from the Colorado River to 4,400,000 acre feet per annum of water apportioned to the lower basin by Article III(a) of the Compact, plus one-half of the excess or surplus water unapportioned by the Compact, all such uses to be subject to the Compact.

In the Project Act it was provided, among other things:

(1) That the dam, now known as Boulder Dam, was authorized for the storage of water for beneficial use "exclusively within the United States" (Section 1);

(2) That water delivery contracts made by the Secretary of the Interior for the use of water stored by the project should be for "permanent service" (Section 5);

(3) That no person should have the right to the use of such stored water other than by contract with the Secretary of the Interior (Section 5).

Inasmuch as the Limitation Act was adopted in consideration of the passage of the Project Act, California, under the resulting Statutory Agreement, has a contract interest in these and all other provisions of the Project

Act which tend to protect her in the use of Colorado River water. Any act on the part of the United States that would limit California in the use of water, in any manner more restrictive than that set out in the Project Act, would constitute a breach of a solemn agreement made between the State and the United States.

The Statutory Agreement limits California's use of Colorado River water to a fixed amount of water apportioned by Article III(a) of the Compact, plus "one-half of the excess or surplus unapportioned by the Compact." The words "excess or surplus" must be construed in the light of the Act in consideration of which the limitation was agreed to, that is, without extension of the benefits of the project to Mexico and without deduction of water to satisfy a treaty grant to Mexico in excess of the then established Mexican use.

While it is recognized that "excess or surplus" is a variable quantity, and, so far as the interests of states named as beneficiaries of the Limitation Act are affected (Mexico is not so named), variations in flow may result in variations in the one-half of excess or surplus available to California, such excess or surplus may not, so long as the Statutory Agreement is respected, be reduced by extending to Mexico the benefits of the Boulder Project, that is, by guaranteeing to Mexico water in excess of the amount then understood to be available to her from the river, unregulated by Boulder Dam.

The pending treaty undertakes to "guarantee" to Mexico 1,500,000 acre feet of water per annum from the Colorado River to be delivered in accordance with a schedule to be submitted by Mexico. Such guarantee would be impossible without the regulation of the river afforded by the Boulder Project. This is true whether the delivery be

direct from the natural flow of the river or be the result of return flow available because of application of water stored at Boulder to lands within the United States. The greatest use Mexico had ever made of water of the Colorado River, and the greatest use which could be made of such water in Mexico, without the benefit of the Boulder Project, was 750,000 acre feet per annum. The average use was much less. Even controlled delivery of 750,000 acre feet could not be "guaranteed" to Mexico in the absence of large storage in the United States.

As to the additional 750,000 acre feet of the guaranteed delivery, the treaty would, if ratified, constitute a clear and substantial breach on the part of the United States of its Statutory Agreement, in that it would extend the benefits of Boulder storage to Mexico; it would prevent the Secretary of the Interior from complying with contracts for permanent service; and it would create a right in waters stored at Boulder by a means other than contract with the Secretary of the Interior.

It has been, and will be, urged that, by subscribing to the six-state Colorado River Compact, and under the so-called availability clause of the water delivery contracts made with California agencies, such agencies have agreed to suffer a diminution of the quantity of water to be delivered under such contracts, to make possible the guaranteed delivery of water to Mexico. With this interpretation California emphatically disagrees. The Compact merely provides for a contingency, whereas the Statutory Agreement, upon which California relies, is specific and controlling.

It is the purpose of this memorandum to more fully develop the points hereinabove outlined.

II.

The Boulder Canyon Project Act.

(Appendix A.)

The Project Act, as it reached the Senate, authorized the construction of a dam on the Colorado River, subsequently known as Boulder Dam, for the purpose, among other things, of the storage and delivery of water for reclamation of public lands and other beneficial uses within the United States. In the Senate Committee, the word "exclusively" was added, so that the phrase in the final enactment was "for reclamation of public lands and other beneficial uses exclusively within the United States." (Section 1.)

No reference to legislative history is necessary to clarify the meaning of those words. Their relation to the Mexican problem, however, was fully discussed on the floor of the Senate in such a manner as to remove any conceivable doubt as to their purpose and significance.

The late Senator Pittman of Nevada, speaking on the floor of the Senate, and discussing Section 1 of the Project Act, said:

"* * * The natural flow of that river today will not irrigate any more than 240,000 acres of land in Mexico. That is all it will irrigate. I think it is the recognized policy of Congress—certainly it is recognized in the very opening paragraph of this bill—that the comity between nations does not call upon the United States to furnish to Mexico any water that has accumulated in the United States through ex-

penditures made by the United States. If this dam is never built, if there is no water impounded on that river, Mexico a thousand years from now will be where Mexico is today with regard to irrigation in Mexico.

“* * *

“The committee added those words ‘within the United States’ for the very purpose of declaring the policy of Congress and of this Government if and when this legislation becomes a law. There is no question what Congress will mean by that if they pass the bill. They will mean exactly the same thing those governors desire. * * *

“We will assume, however, as a violent conclusion, that the Secretary of State of the United States would enter into a treaty with Mexico, giving them many times the amount of water to which they were entitled, from the natural flow of this river, and, to do so, should attempt to injure some vested rights in this country, to take away from people the use of water they had been legally using for irrigation.

“That treaty would have to come to this body for ratification before it would ever be a treaty. It would take two-thirds of this body to ratify it. It is totally inconceivable, if we pass this bill, which states that all the impounded water above the natural flow shall be used exclusively within the United States, that they would ratify any such treaty. They would have just as much right to say to Mexico then, as they would have if we would pass just such a resolution as the Senator from Utah has read: ‘You never had

any right under the comity of nations to the stored waters of our country. Your rights were solely limited to the natural flow and the use to which you put the natural flow. Then, in addition to that, the Congress of the United States passed a public act in which they stated to you and the rest of the world that all of this impounded water was to be used exclusively in the United States. You and your citizens had notice of it. You cannot complain that you are now injured because you took no notice of it.'

"There is not a chance in the world of Mexico ever getting anything except that which she is morally entitled to under the comity of nations, and we know just what that is." (Congressional Record, 70th Congress, 2nd Session, Vol. 70, part 1, pages 337-338.)

Later (page 468), Senator Pittman said:

"* * * I think, also, that under the comity that exists between nations the only water that Mexico could claim would be water that she has appropriated from the natural flow of the stream, and that she could claim none of the benefits of the water increased by our impounding works."

The Project Act was finally adopted with the words "for beneficial use exclusively within the United States" appearing in the first section. Thus, the United States, speaking through the Congress, declared its policy with respect to additional water made available by storage at the Boulder Project.

THE UNITED STATES, IN THE PROJECT ACT, SAID, IN EFFECT, THAT AS A MATTER OF INTERNATIONAL COMITY IT WAS NOT REQUIRED TO AND WOULD NOT EXTEND TO MEXICO THE BENEFIT OF WORKS BUILT BY THE UNITED STATES UNDER THE PROJECT ACT.

In the Statutory Agreement between the United States and the State of California, and in all contracts and other documents written pursuant to, or authorized by or relating to, the Project Act, the parties dealing with respect to the Colorado River System were entitled to, and did, rely upon the provisions of the Project Act, limiting the beneficial use of water from storage at Boulder to lands within the United States.

The Project Act contains a section (20) which neither denies nor affirms any Mexican rights in the Colorado River, and which negatives any suggestion that the Project Act contemplated use of American works to increase Mexican rights.

Section 5 of the Boulder Canyon Project Act, so far as it relates to the problem before us, reads as follows:

“Sec. 5. That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof to such points on the river and on said canal as may be agreed upon, for irrigation and domestic uses, * * * upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this act, will in his judgment cover all expenses of operation and maintenance incurred by

the United States on account of works constructed under this act and the payments to the United States under subdivision (b) of section 4. Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to paragraph (a) of section 4 of this act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated."

Contracts could not be for permanent service and at the same time subject to reduction in favor of Mexico.

That rights in stored water adverse to contract rights could be created concurrently with the full performance under the Project Act is negated by the provision that "no person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated."

True, the Project Act approved the Colorado River Compact (hereinafter discussed) and required its observance in use of waters of the Colorado River. It requires no citation of authority, however, to establish the proposition that the specific provisions of the Project Act control over the contingent provisions of the Compact.

This point is illustrated by the language of Justice Brandeis in *State of Arizona v. State of California*, 283 U. S. 423, 75 L. Ed. 1154. It was argued that the Project Act could not be sustained, as an exercise of Federal power to control and improve navigation, because, in the Compact, which was approved by the Project Act, it was re-

cited that the river had ceased to be navigable for commerce. The Project Act, however, specifies that the dam shall be used "first for river regulation, improvement of navigation and flood control, second for irrigation and domestic uses, and third for power." The validity of the Act was established under the "Commerce Clause" of the Constitution and upon the basis of improvement of navigation.

The Court said:

"* * * It is true that the authority conferred is stated to be 'subject to the Colorado River Compact,' and that instrument makes the improvement of navigation subservient to all other purposes. But the specific statement of primary purpose in the Act governs the general references to the compact. * * *"

This statement may be properly paraphrased to say that "while it is true that the Compact provides for the contingency of an allotment of water to Mexico, the specific provisions of the Project Act govern the general reference to the Compact."

Under Section 4(a), the Project Act was not to go into effect until the seven states of the basin had ratified the Colorado River Compact. However, an alternative to seven-state ratification was written in, that is, a provision for a six-state compact, including California, plus an act on the part of the legislature of the State of California limiting its use of water.

III.

The California Limitation Act and the Statutory Agreement.

(Appendix B.)

During the years following the writing of the Compact (1922), and prior to the adoption of the Project Act, it had become apparent that the State of Arizona would not ratify the Compact. Consequently, in Section 4(a) of the Project Act, and as an alternative to seven-state ratification, the Congress provided that the Act should not take effect until and unless the Compact be ratified by at least six states, including California, and

“* * * until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant, and in consideration of the passage of this act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this act and all water necessary for the supply of any rights which may now exist, shall not exceed 4,400,000 acre feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River Compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.”

These points should be specially noted: (1) That the agreement on California's part was to be “in consideration of the passage” of the Project Act, which of course includes all of the provisions of the Act, (2) that the agree-

ment was to be for the benefit of certain named states (not including Mexico), and (3) that the phrase "excess or surplus water unapportioned by said Compact" must be read in the light of the language of the Project Act and the facts as relied on by the parties.

The State of California, through its legislature, and subsequent to, and in the light of, the Project Act, adopted an act known as the Limitation Act, in the language of, and in direct response to, that part of the Project Act last above quoted. The full text of the Limitation Act appears in Appendix B. California also ratified the Colorado River Compact as a six-state compact.

The President, on June 25, 1929, issued a proclamation (Appendix D), saying that (a) there was no seven-state compact, (b) there was a six-state compact, including California, (c) California had complied with the Project Act. By this proclamation, the President, basing his action, in part, on the Limitation Act, declared the Project Act to be in effect.

Thus, in lieu of a seven state compact, there was substituted a six-state compact, plus the Statutory Agreement evidenced by the Project Act and the California Limitation Act.

The Statutory Agreement covers matters not present in the Compact, notably the provision that the dam was authorized for the storage of water for beneficial use exclusively within the United States. This provision and the other provisions of the Act referred to in Article II hereof are all parts of the Statutory Agreement.

Without the protection provided by the Project Act, it cannot be said that California would have accepted the harsh limitation imposed upon her development by the Limitation Act.

IV.

The Colorado River Compact.

(Appendix C.)

The Colorado River Compact was written and subscribed by representatives of the seven states of the Colorado River basin (Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming) in 1922, subject to ratification by the legislatures of the several states and approval by the Congress. The Compact was ratified at various times by the respective legislatures of six of the seven basin states (Arizona not ratifying), over a period ending in 1929. The Compact was and is an agreement between states, apportioning the waters of the Colorado River system between the upper and lower basins. The Congress of the United States had authorized negotiation of the Compact, and, pursuant to constitutional requirement, in 1928, in the Project Act, approved the Compact and required compliance therewith in the use of waters of the Colorado River System. The United States, however, was not a party to the Compact in the ordinary sense.

In subdivisions (a) and (b) of Article III of the Compact, certain waters were specified as available to the upper and lower basins respectively, aggregating 16,000,000 acre feet per annum. In subdivision (c) of Article III, it was provided that:

“If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River system, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the upper basin and the lower basin * * *.”

It is upon this subsection, and the fact that all water delivery contracts under the Project Act are subject to availability of water under the Compact, that interests adverse to California base the statement that the surplus waters of the river, as to which California agencies have a right to contract, are made subject to an agreed diminution in favor of Mexico whenever the United States should see fit, by treaty, to create a conflicting water right in Mexico.

The argument, however, ignores the fact that the so-called availability clause refers also to the Project Act, and ignores the text of the Project Act and the California Limitation Act, and the resulting Statutory Agreement.

It will be noted that the quoted clause of the Compact merely provides for a contingency, that is, it provides that, if a burden be created by a supervening authority, such burden shall be borne in a prescribed manner. It does not purport to reserve to, or create in, the United States any right to dispose of surplus water; it does not purport to create any water right in Mexico; it assumes the existence of the treaty-making power on the part of the United States, but does not purport to, and could not, be the source of that power; it does not purport to, and could not, bind or limit the treaty-making power of the United States in the making or creation of water rights in Mexico, nor does it attempt to determine the policy of the United States in the disposition of water made available by works of the United States. (That was done later by the Project Act.) It merely represents an agreement between the states as to how, if created, a burden shall be borne.

The language of the Compact is unambiguous in this respect. However, we have a contemporary interpretation which removes any doubt as to what was in the minds of the parties. Former President Hoover, then Secretary of

Commerce, presided over the conference of states which resulted in the Compact. Certain questions were submitted to him by Senator (then Representative) Carl Hayden. The questions and Mr. Hoover's answers thereto appear in "Extension of remarks of Hon. Carl Hayden in House of Representatives, Tuesday, January 30, 1923, Congressional Record, page 2710."

The questions and answers related to the proposed seven-state Compact and do not take into consideration the language of the Project Act which was adopted years later.

We quote questions 9 and 11, and Mr. Hoover's answers thereto:

"Question 9. Does paragraph (c) of Article III contemplate a treaty between the United States and the Republic of Mexico under which one-half of a deficiency of water for the irrigation of lands in Mexico shall be supplied from reservoirs in Arizona?

"No. Paragraph (c) of Article III does not contemplate any treaty. It recognizes the possibility that a treaty may, at some time, be made and that under it Mexico may become entitled to the use of some water, and divides the burden in such an event, but the quantity to which that country may become entitled and the manner, terms, and conditions upon which such use may depend, can not be foreseen.

"It is a certainty that no such treaty will be negotiated and ratified which is unfair to the United States or any State or detrimental to their interests. To discuss whether or not a treaty might be made under which Mexico might be permitted to receive water impounded in a reservoir which may be constructed is to indulge in speculation, but it is safe to say that if such a situation should result it will be

only under conditions fair and satisfactory to all parties concerned.

“Question 11. Is there any possibility that water stored by dams in the tributaries of the Colorado River in Arizona, such as the Roosevelt Reservoir, on the Salt River, or the San Carlos Reservoir, on the Gila, might under the terms of such a treaty, be released for use in Mexico to the injury of the water users of the projects for whose benefit such dams were constructed?

“I can not conceive of the making or the ratification of a treaty which would have such an effect. If it were possible to believe that the Federal Government would treat its own citizens with such absolute disregard of their property and rights, I presume that they would receive ample protection, even as against the Government, under the provisions of the Federal Constitution.

“It must be remembered that the United States now has a large financial interest in the projects already constructed. It is not to be presumed that action will be taken detrimental to these interests. Furthermore, each of the seven States directly concerned has two Members of the Senate, by which any treaty proposed must be ratified.”

It is apparent from the answers made by Mr. Hoover that the framers of the Compact did not attempt to fix or determine any right to the use of water in Mexico, nor to express consent to the creation of such rights in any manner adverse to their interests or the interest of any one of them.

Under these circumstances a reference to the Compact in the water delivery contracts cannot be construed as the reservation of a right on the part of the United States to take water away from its Boulder contractors and bestow such water upon Mexico.

V.

Status of Water Use in Mexico Prior to Regulation of
Colorado River by Boulder Project.

It is a matter of official record, and was the basis of action in the House and Senate in the adoption of the Boulder Canyon Project Act, that the use of Colorado River water in Mexico at that time (1928) had reached the limit of safe and profitable development with the river unregulated by Boulder. In this connection, Senator Pittman, speaking on the floor of the Senate during the debate on the Project Act, on the 10th day of December, 1928 (Congressional Record, 70th Congress, Second Session, Vol. 70, Part 1, page 337), said:

“* * * The natural flow of that river (the Colorado) today will not irrigate any more than 240,000 acres of land in Mexico. That is all it will irrigate.
* * * If this dam is never built, if there is no water impounded on that river, Mexico a thousand years from now will be where Mexico is today with regard to irrigation in Mexico.”

In a report of the American Section of the International Water Commission, United States and Mexico, dated March 22, 1930 (71st Congress, Second Session, House Document No. 359), subscribed by Elwood Mead, Director of Bureau of Reclamation; General Lansing H. Beach, United States Army, Retired, and Mr. W. E. Anderson of San Benito, Texas, the use of Colorado River water in Mexico was discussed. Among other things, the American Section stated that:

“* * * The location of the Mexican land at the lower end of the river gives it for all time control and use of all the surplus flow. Both ability to use

this surplus and also relief from the chief danger from destructive floods, will be promoted by the construction of Boulder Dam. The proposal of the American Section to recommend recognizing as a reasonable equity an annual use of 750,000 acre feet, *this being the greatest amount heretofore used in one year*, is all that it is believed the United States should concede."

In a report known as House Document 395, 73rd Congress, Second Session, and signed by W. J. Barden, Colonel, Corps of Engineers, Board of Engineers for Rivers and Harbors; Thomas M. Robins, Lt. Col., Corps of Engineers, Division Engineer, Pacific Division; Elwood Mead, Commissioner Reclamation; W. N. White (for O. E. Meinzer, Chief, Ground Water Division, Geological Survey); S. H. McCrory, Bureau Agricultural Engineering, and T. W. Norcross, Forest Service, the following statement appears:

"* * * Another reason for the American limitation of the Mexican rights was that *the limits of safe and profitable development in Mexico with an unregulated river had already been reached*. Changes in conditions wrought by Boulder Dam built at the expense of the United States ought not deprive the United States of the stored water through increased use in Mexico. The benefits of that expenditure belong to the United States. In the plans that are being made for the use of Boulder Dam storage no special provision has been made for Mexico. * * *"

These statements outline the facts as they existed and were understood by parties to the Statutory Agreement.

VI.

California Water Delivery Contracts.

The United States has entered into water delivery contracts with several agencies in the State of California. Such contracts were executed on behalf of the United States by the Secretary of the Interior under authority of the Project Act.

Each of the contracts calls for "permanent service" of water. The contracts contain no reservation or provision authorizing the reduction of the amounts of water to be delivered for the purpose of accommodating any Mexican allotment. The only basis for argument that such reductions had been agreed to by California contractors arises out of references to availability of water and the fact that the contracts are subject to the Colorado River Compact. The so-called "availability clause" occurs in all of the water delivery contracts and is typified by the contract between the United States and The Metropolitan Water District of Southern California. The text of this, a typical contract, appears as Appendix E. The contract provides that:

"The United States shall, from storage available in the reservoir created by Hoover Dam (Boulder Dam) deliver to the District each year * * * so much water as may be necessary to supply the District a total quantity of water in the amounts and with the priorities * * * as follows (subject to the availability thereof for use in California under the Colorado River Compact and the Boulder Canyon Project Act): * * *"

In the schedule set out in the contract, the amount specified for the District occurs in the fourth and fifth

priorities and aggregates 1,100,000 acre feet per annum.

It will be noted that the "availability" clause refers not only to the Compact but to the Project Act. Under these circumstances, if possible, effect should be given to both documents.

There is no conflict between the Compact and the Project Act in the matter of water to be allotted to Mexico. The Compact (an agreement among the states) settles the question of how the Mexican burden shall be borne, if such burden shall be created by the supervening treaty power of the United States. The Project Act, in turn, settles the policy of the United States and determines the extent of the Mexican burden. The extent of the Mexican burden so limited by the Project Act, was one of the factors necessarily involved in the Statutory Agreement and in the application of the words "excess or surplus water unapportioned by the Compact."

Giving effect to the Project Act, the reference to the Compact does not amount to a reservation on the part of the United States of the right to curtail use of water to be delivered under the California contracts at any time in the future, for the purpose of accommodating an allotment to Mexico.

The California contracts call for ultimate delivery of an aggregate annual amount of 5,362,000 acre feet. Of this amount 962,000 acre feet are obviously in excess of the "4,400,000 acre feet of the waters apportioned to the lower basin states by paragraph (a) of Article III of the Colorado River Compact," and will be taken under the right of agencies within California to contract for the additional amount "not more than one-half of any excess or surplus waters unapportioned by said Compact."

The only water definitely apportioned by the Compact is the aggregate of 15,000,000 acre feet per annum apportioned between the upper and lower basins by Article III(a). (Note 1.)

So long as the "excess or surplus," over water apportioned by the Compact (measured without deduction for Mexico in excess of the allotment contemplated by the parties to the Statutory Agreement) is twice the 962,000 acre feet per annum, the California contracts are firm. In the event that excess or surplus so measured should fall below twice 962,000 acre feet, any adjustment required by the Statutory Agreement would be made to accommodate the rights of the named beneficiaries of that agreement, that is, the other states of the Colorado River basin. In no event may the "excess or surplus" unapportioned by the Compact, as that phrase is used in the Statutory Agreement, be rightfully reduced to the detriment of California or its water contractors for the purpose of accommodating a Mexican treaty calling for delivery of water in addition to that contemplated by the parties at the time the Statutory Agreement and the water delivery contracts were executed. Such action on the part of the United States would constitute a breach of contract upon which substantial investments have been made.

Note 1. It may be argued that the additional one million acre feet specified in Article III(b) of the Compact is to be considered as "apportioned," as the word is used in the Project Act and the California Limitation Act. That question will become important in settlement of controversies between Arizona and California, but for the purpose of the present discussion, it is immaterial. It does not matter whether "excess or surplus unapportioned by the Compact" means excess over 15,000,000 acre feet per annum or excess over 16,000,000 acre feet per annum. In either case such excess must be considered, in applying the Statutory Agreement and the California water delivery contracts, without deduction in favor of Mexico.

VII.

Conclusion.

The documents and principles herein discussed support the following conclusions:

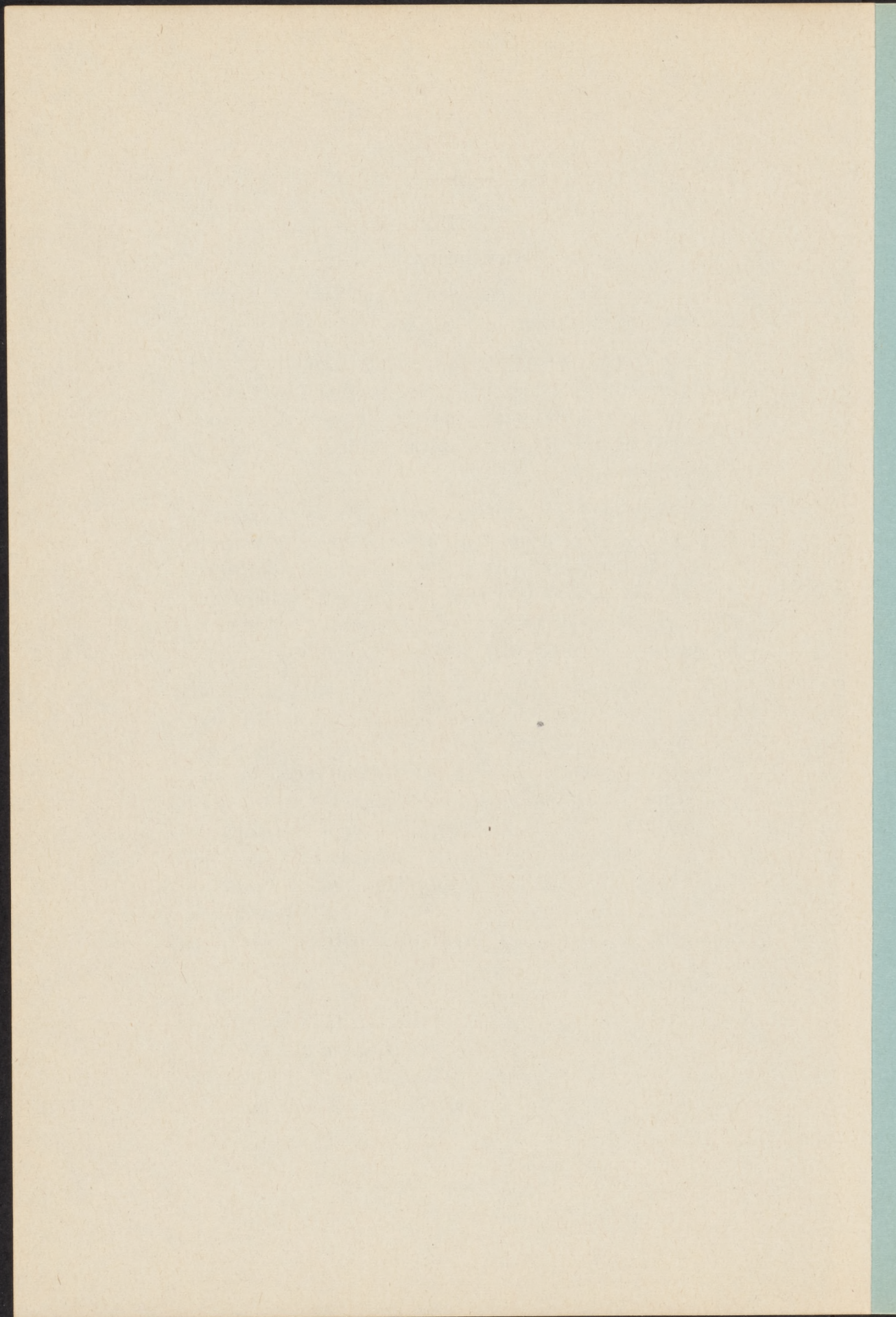
1. The pending treaty with the United Mexican States would constitute a breach of the Statutory Agreement between the United States and the State of California, evidenced by the Boulder Canyon Project Act and the California Limitation Act.

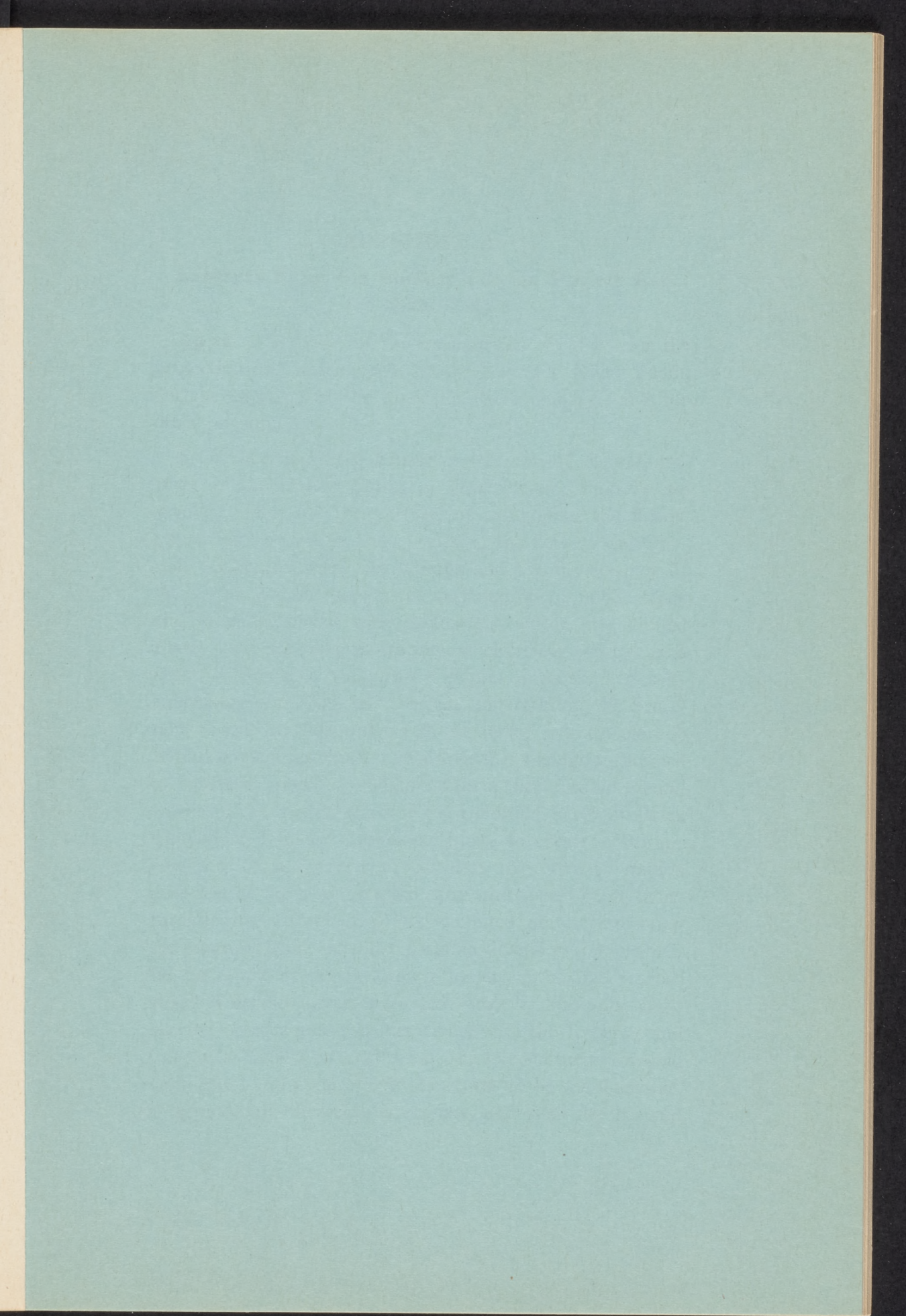
2. Water delivery contracts of the United States, executed by the Secretary of the Interior with water users in California, under authority of the Boulder Canyon Project Act, are not, by reason of reference to the Colorado River Compact, or otherwise, subject to agreed diminution to accommodate a treaty with Mexico.

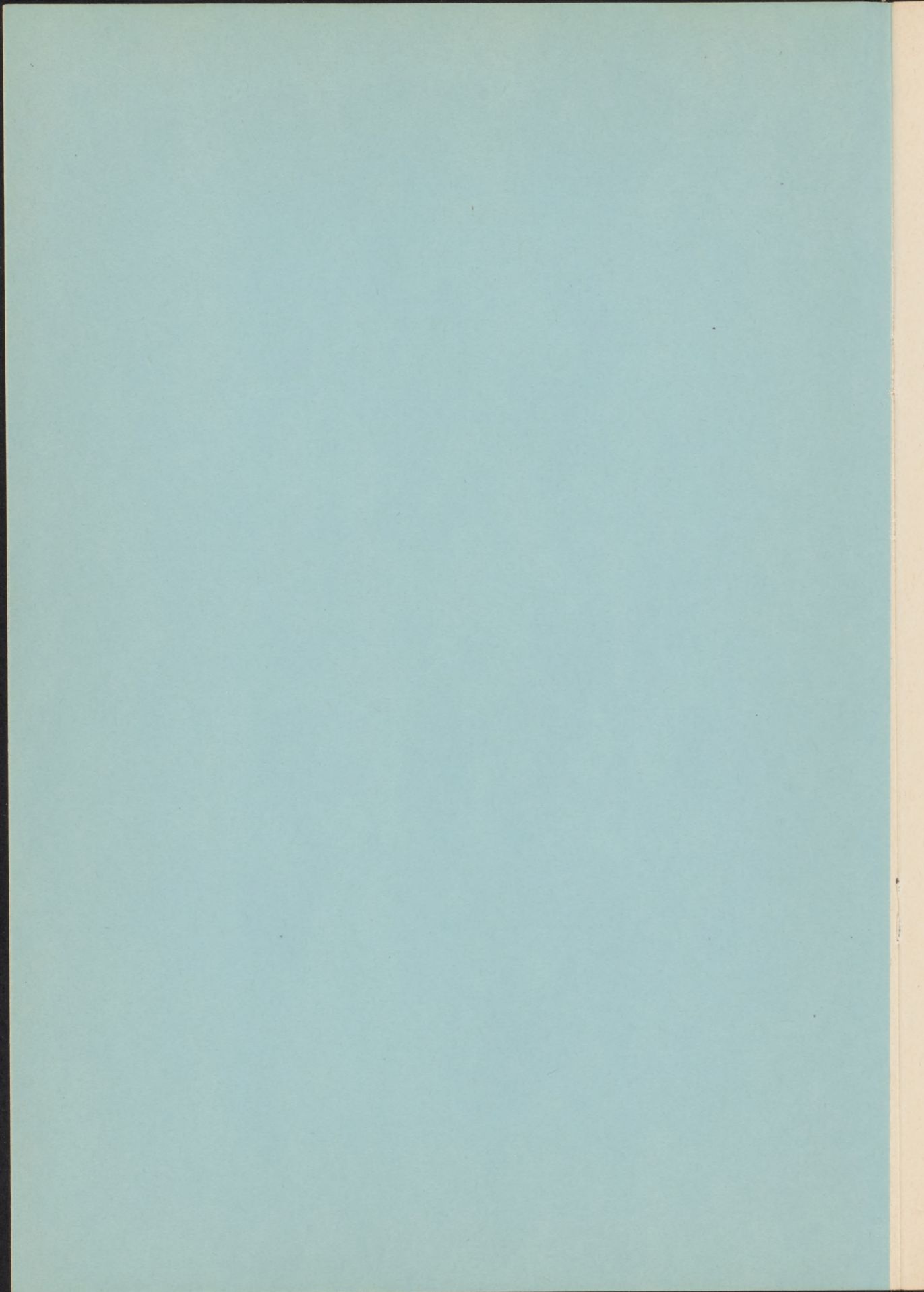
3. As against such diminution the California water delivery contracts are firm, not only as to 4,400,000 acre feet of water apportioned by Article III(a) of the Colorado River Compact, but as to one-half of excess or surplus water unapportioned by the Compact. Such excess or surplus is to be measured in the light of the language of the Boulder Canyon Project Act and the Statutory Agreement between the United States and the State of California, that is, without extension of the benefits of storage at Boulder to the service of Mexico.

April 20, 1944.

JAMES H. HOWARD,
General Counsel,
The Metropolitan Water District
of Southern California.







APPENDIX A.

Excerpts From the Boulder Canyon Project Act (55 Stats. 774).

An act to provide for the construction of works for the protection and development of the Colorado River Basin, for the approval of the Colorado River compact, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking, the Secretary of the Interior, subject to the terms of the Colorado River compact hereinafter mentioned, is hereby authorized to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, which the Secretary of the Interior is hereby authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations, with the Imperial and Coachella Valleys in California, the expenditures for said main canal and appurtenant structures to be reimbursable, as provided in the reclamation law, and shall not be paid

out of revenues derived from the sale or disposal of water power or electric energy at the dam authorized to be constructed at said Black Canyon or Boulder Canyon, or for water for potable purposes outside of the Imperial and Coachella Valleys: *Provided, however,* That no charge shall be made for water or for the use, storage, or delivery of water for irrigation or water for potable purposes in the Imperial or Coachella Valleys; also to construct and equip, operate, and maintain at or near said dam, or cause to be constructed, a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from said reservoir; and to acquire by proceedings in eminent domain, or otherwise, all lands, rights of way, and other property necessary for said purposes.

* * * * *

Sec. 4(a) This act shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this act, and no water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, shall have ratified the Colorado River compact, mentioned in section 13 hereof, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact, within six months from the date of the passage of this act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said

compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval and the President by public proclamation shall have so declared, and, further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this act and all water necessary for the supply of any rights which may now exist, shall not exceed 4,400,000 acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

* * * * *

Sec. 5. That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof to such points on the river and on said canal as may be agreed upon, for irrigation and domestic uses, and generation of electrical energy and delivery at the switchboard to States, municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this

act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this act and the payments to the United States under subdivision (b) of section 4. Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to paragraph (a) of section 4 of this act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated.

* * * * * * * *

Sec. 20. Nothing in this act shall be construed as a denial or recognition of any rights, if any, in Mexico to the use of the waters of the Colorado River system.

* * * * * * * *

APPENDIX B.

California Limitation Act (Stats. 1929, p. 38).

An act to limit the use by California of the waters of the Colorado river in compliance with the act of congress known as the "Boulder canyon project act," approved December 21, 1928, in the event the Colorado River compact is not approved by all of the states signatory thereto.

(Approved by the Governor March 4, 1929. In effect August 14, 1929.)

The people of the State of California do enact as follows:

Section 1. In the event the Colorado river compact signed at Santa Fe, New Mexico, November 24, 1922, and approved by and set out at length in that certain act entitled "An act to ratify and approve the Colorado river compact, signed at Santa Fe, New Mexico, November 24, 1922, to repeal conflicting acts and resolutions and directing that notice be given by the governor of such ratifications and approval," approved January 10, 1929, (statutes 1929, chapter 1) is not approved within six months from the date of the passage of that certain act of the congress of the United States known as the "Boulder canyon project act," approved December 21, 1928, by the legislatures of each of the seven states signatory thereto, as provided by article eleven of the said Colorado river compact, then when six of said states, including California, shall have ratified and approved said compact, and shall have consented to waive the provisions of the first paragraph of article eleven of said compact which makes the same binding and obligatory when approved by each of the states

signatory thereto, and shall have approved said compact without conditions save that of such six states approval and the President by public proclamation shall have so declared, as provided by the said "Boulder canyon project act," the State of California as of the date of such proclamation agrees irrevocably and unconditionally with the United States and for the benefit of the states of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming as an express covenant and in consideration of the passage of the said "Boulder canyon project act" that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado river for use in the State of California including all uses under contracts made under the provisions of said "Boulder canyon project act," and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin states by paragraph "a" of article three of the said Colorado river compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

Sec. 2. By this act the State of California intends to comply with the conditions respecting limitation on the use of water as specified in subdivision 2 of section 4(a) of the said "Boulder canyon project act" and this act shall be so construed.

APPENDIX C.

Colorado River Compact.

Signed at Santa Fe, New Mexico, Nov. 24, 1922

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, having resolved to enter into a compact under the Act of Congress of the United States of America approved August 19, 1921 (42 Statutes at Large, page 171), and the Acts of the Legislatures of the said States, have through their Governors appointed as their Commissioners:

W. S. Norviel, for the State of Arizona,

W. F. McClure, for the State of California,

Delph E. Carpenter, for the State of Colorado,

J. G. Scrugham, for the State of Nevada,

Stephen B. Davis, Jr., for the State of New Mexico,

R. E. Caldwell, for the State of Utah,

Frank C. Emerson, for the State of Wyoming, who, after negotiations participated in by Herbert Hoover, appointed by the President as the representative of the United States of America, have agreed upon the following articles:

ARTICLE I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters, and the protection

of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

ARTICLE II

As used in this compact:

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah, and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California, and Nevada.

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and

Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power.

ARTICLE III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the

deficiency so recognized in addition to that provided in paragraph (d).

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water which can not reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment, as provided in paragraph (f), any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to the President of the United States of America, and it shall be the duty of the Governors of the signatory States and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System, as mentioned in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America.

ARTICLE IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural, and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any State within its boundaries of the appropriation, use, and distribution of water.

ARTICLE V

The chief official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey, shall cooperate, *ex officio*:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

ARTICLE VI

Should any claim or controversy arise between any two or more of the signatory States (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

ARTICLE VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

ARTICLE VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this com-

pact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to the beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that basin in which they are situate.

ARTICLE IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

ARTICLE XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the Presi-

dent of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

In witness whereof the Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, New Mexico, this twenty-fourth day of November, A. D. one thousand nine hundred and twenty-two.

(Signed) W. S. NORVIEL
(Signed) W. F. McCLURE
(Signed) DELPH E. CARPENTER
(Signed) J. G. SCRUGHAM
(Signed) STEPHEN B. DAVIS, JR.
(Signed) R. E. CALDWELL
(Signed) FRANK C. EMERSON

Approved:

(Signed) HERBERT HOOVER

APPENDIX D.

**President Hoover's Proclamation Making Effective
the Boulder Canyon Project Act of December 21,
1928.**

On June 25, 1929, President Hoover issued the following public proclamation:

Pursuant to the provisions of section 4(a) of the Boulder Canyon Project Act approved December 21, 1928 (45 Stat. 1057), it is hereby declared by public proclamation:

(a) That the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming have not ratified the Colorado River Compact mentioned in section 13(a) of said act of December 21, 1928, within six months from the date of the passage and approval of said act.

(b) That the States of California, Colorado, Nevada, New Mexico, Utah, and Wyoming have ratified said compact and have consented to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and that each of the States last named has approved said compact without condition, except that of six-State approval as prescribed in section 13(a) of said act of December 21, 1928.

(c) That the State of California has in all things met the requirements set out in the first paragraph of section 4(a) of said act of December 21, 1928, necessary to

render said act effective on six-State approval of said compact.

(d) All prescribed conditions having been fulfilled, the said Boulder Canyon Project Act approved December 21, 1928, is hereby declared to be effective this date.

In testimony whereof I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the city of Washington this 25th day of June, in the year of our Lord one thousand nine hundred and twenty-nine, and of the Independence of the United States of America the one hundred and fifty-third.

HERBERT HOOVER.

(Seal)

By the President:

HENRY L. STIMSON,
Secretary of State.

APPENDIX E.

Boulder Canyon Project.

Contract for Delivery of Water.

The United States and The Metropolitan Water
District of Southern California.

April 24, 1930.

Amended September 28, 1931.

CONTRACT FOR DELIVERY OF WATER

(As amended by supplementary contract of Sept. 28,
1931.)

(1) This contract, made this 24th day of April, nineteen hundred thirty, pursuant to the act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the reclamation law, and particularly pursuant to the act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon project act, between the United States of America, hereinafter referred to as the United States, acting for this purpose by Ray Lyman Wilbur, Secretary of the Interior, hereinafter styled the Secretary and the Metropolitan Water District of Southern California, a public corporation, hereinafter styled the district, organized and existing under the laws of the State of California.

Witnesseth:

Explanatory Recitals

(2) Whereas, for the purpose of controlling the floods, improving navigation, and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters for reclamation of public lands and other beneficial uses exclusively within the United

States, the Secretary, subject to the terms of the Colorado River compact, is authorized to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water; and

(3) Whereas, after full consideration of the advantages of both the Black Canyon and Boulder Canyon Dam sites, the Secretary has determined upon Black Canyon as the site of the aforesaid dam, hereinafter styled the Boulder Canyon Dam, creating thereby a reservoir to be hereinafter styled the Boulder Canyon Reservoir and has determined that the revenues provided for by this contract, together with other contracts in accordance with the provisions of the Boulder Canyon project act, are adequate in his judgment to insure payment of all expenses of operation and maintenance of the Boulder Canyon Dam and appurtenant works incurred by the United States, and the repayment within fifty (50) years from the date of completion of said works of all amounts advanced to the Colorado River dam fund under subdivision (b) of section 2 of the Boulder Canyon project act, together with interest thereon made reimbursable under said act; and

(4) Whereas, the district is desirous of entering into a contract for the delivery to it of water from Boulder Canyon Reservoir.

(5) Now, therefore, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Delivery of Water by the United States

(6) The United States shall, from storage available in the reservoir created by Hoover Dam, deliver to the dis-

trict each year at a point in the Colorado River immediately above the district's point of diversion (at or in the vicinity of the proposed Parker Dam) so much water as may be necessary to supply the district a total quantity, including all other waters diverted by the district from the Colorado River, in the amounts and with priorities in accordance with the recommendation of the chief of the division of water resources of the State of California, as follows (subject to the availability thereof for use in California under the Colorado River compact and the Boulder Canyon project act):

The waters of the Colorado River available for use within the State of California under the Colorado River compact and the Boulder Canyon project act shall be apportioned to the respective interests below named and in amounts and with priorities therein named and set forth, as follows:

Section 1. A first priority to Palo Verde Irrigation District for beneficial use exclusively upon lands in said district as it now exists and upon lands between said district and the Colorado River, aggregating (within and without said district) a gross area of 104,500 acres, such waters as may be required by said lands.

Sec. 2. A second priority to Yuma project of United States Bureau of Reclamation for beneficial use upon not exceeding a gross area of 25,000 acres of land located in said project in California, such waters as may be required by said lands.

Sec. 3. A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use ex-

clusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 3,850,000 acre-feet of water per annum less the beneficial consumptive use under the priorities designated in sections 1 and 2 above. The rights designated (a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in sections 1, 2 and 3 of this article shall not exceed 3,850,000 acre-feet of water per annum.

Sec. 4. A fourth priority to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the coastal plain of Southern California, 550,000 acre-feet of water per annum.

Sec. 5. A fifth priority (a) to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the coastal plain of Southern California, 550,000 acre-feet of water per annum and (b) to the City of San Diego and/or County of San Diego, for beneficial consumptive use, 112,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Sec. 6. A sixth priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 300,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Sec. 7. A seventh priority of all remaining water available for use within California, for agricultural use in the Colorado River Basin in California, as said basin is designated on map No. 23000 of the Department of the Interior, Bureau of Reclamation.

Sec. 8. So far as the rights of the allottees named above are concerned, the Metropolitan Water District of Southern California and/or the City of Los Angeles shall have the exclusive right to withdraw and divert into its aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said district and/or said city (not exceeding at any one time 4,750,000 acre-feet in the aggregate) by reason of reduced diversions by said district and/or said city; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release, and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between said district and/or said city and such users resulting therefrom.

Sec. 9. In addition, so far as the rights of the allottees named above are concerned, the City of San Diego and/or County of San Diego shall have the exclusive right to withdraw and divert into an aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said city and/or said county (not exceeding at any one time 250,000 acre-feet in the aggregate) by reason of reduced diversions by said city and/or said county; provided, that accumulations shall be sub-

ject to such conditions as to accumulation, retention, release, and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between the said city and/or said county and such users resulting therefrom.

Sec. 10. In no event shall the amounts allotted in this agreement to the Metropolitan Water District of Southern California and/or the City of Los Angeles be increased on account of inclusion of a supply for both said district and said city, and either or both may use said apportionments as may be agreed by and between said district and said city.

Sec. 11. In no event shall the amounts allotted in this agreement to the City of San Diego and/or to the County of San Diego be increased on account of inclusion of a supply for both said city and said county, and either or both may use said apportionments as may be agreed by and between said city and said county.

Sec. 12. The priorities hereinbefore set forth shall be in no wise affected by the relative dates of water contracts executed by the Secretary of the Interior with the various parties.

The Secretary reserves the right to, and the district agrees that he may, contract with any of the allottees above named in accordance with the above-stated recommendation, or in the event that such recommendation as to Palo Verde Irrigation District is superseded by an agreement between all the above allottees or by a final judicial

determination, to contract with the Palo Verde Irrigation District in accordance with such agreement or determination; provided, that priorities numbered fourth and fifth shall not thereby be disturbed.

Said water shall be delivered continuously as far as reasonable diligence will permit, but the United States shall not be obligated to deliver water to the district when for any reason such delivery would interfere with the use of Hoover Dam and Boulder Canyon Reservoir for river regulation, improvement of navigation, flood control, and/or satisfaction of perfected rights, in or to the waters of the Colorado River, or its tributaries, in pursuance of Article VIII of the Colorado River Compact, and this contract is made upon the express condition and with the express covenant that the right of the district to waters of the Colorado River or its tributaries is subject to and controlled by the Colorado River compact. The United States reserves the right to discontinue or temporarily reduce the amount of water to be delivered for the purpose of investigation, inspection, maintenance, repairs, replacement, or installation of equipment and/or machinery at Hoover Dam, but so far as feasible the United States will give the district reasonable notice in advance of such temporary discontinuance or reduction, the United States, its officers, agents, and employees shall not be liable for damages when, for any reason whatsoever, suspensions or reductions in delivery of water occur. This contract is for permanent service, but is made subject to the express covenant and condition that in the event water for the district is not taken or diverted by the district hereunder for district purposes within a period of ten (10) years from and after completion of Hoover Dam as announced by the

Secretary, it may in such event upon the written order of the Secretary and after hearing become null and void and of no effect.

Receipt of Water by District

(7) The district shall receive the water to be delivered to it by the United States under the terms hereof at the point of delivery above stated and shall at its own expense convey such water to its proposed aqueduct, and shall perform all acts required by law or custom in order to maintain its control over such water and to secure and maintain its lawful and proper diversion from the Colorado River.

Measurement of Water

(8) The water to be delivered hereunder shall be measured at the intake of the district's proposed aqueduct by such measuring and controlling devices or such automatic gages or both as shall be satisfactory to the Secretary. Said measuring and controlling devices, or automatic gages, shall be furnished, installed, and maintained by and at the expense of the district, but they shall be and remain at all times under the complete control of the United States, whose authorized representatives may at all times have access to them over the lands and rights of way of the district.

Record of Water Diverted

(9) The district shall make full and complete written monthly reports as directed by the Secretary on forms to be supplied by the United States of all water diverted from the Colorado River. Such reports shall be made by the fifth day of the month immediately succeeding the

month in which the water is diverted, and the records and data from which such reports are made shall be accessible to the United States on demand of the Secretary.

Charge for Delivery of Water

(10) A charge of twenty-five cents (\$0.25) per acre-foot shall be made for water delivered to the district hereunder during the Boulder Dam cost-repayment period. It is understood by the district that it may divert water above Boulder Canyon Dam, but that such diversion of water above the dam will reduce the amount of power otherwise available at said dam, and may reduce the amount which would have been utilized, except at times when the reservoir is spilling, and an additional charge, determined as stated below, will be made on account of any such reduction in energy which would otherwise have been utilized in case water is diverted above the dam. The energy which could have been generated by the water diverted above the dam and which would have been utilized at times when the reservoir is not spilling will be calculated from the effective head, the quantity of water diverted, and the over-all efficiency of the power plant, as determined by the Secretary, whose determination shall be conclusive and binding upon the parties hereto. The additional charge per month for diversion above the dam will be the product of such amount of energy and the rate per kilowatt-hour for firm energy at Boulder Canyon Dam in effect at the time of such diversion. Nevertheless, if such diversion during any year (June 1 to May 31, inclusive) has not reduced the amount of firm energy during such year for which the United States has contracted, the diversion, to the extent that no reduction in firm energy has been occasioned, shall be

computed at the rate for secondary energy then in force and credit given on the ensuing year's power bills of the district for the difference between the amount charged therefor and the amount so determined. The Secretary's determination of such credit shall be conclusive. The reservoir shall be considered as spilling whenever water is being discharged in excess of the amount used for the generation of power, whether such waste occurs over the spillway or otherwise. Energy equivalent to water delivered above the dam, determined as above, for which the firm energy rate is charged, shall be included in the total firm energy available at the dam, defined as four billion three hundred thirty million (4,330,000,000) kilowatt-hours per year (June 1 to May 31, inclusive), upon completion of the dam, as announced by the Secretary, and decreasing uniformly thereafter by eight million seven hundred sixty thousand (8,760,000) kilowatt-hours per year, and also included in the district's allotment of firm energy. Nevertheless, if it be determined by the Secretary that the rate of decrease above stated is not in accord with actual conditions, the Secretary reserves the right to fix a lesser rate for any year (June 1 to May 31, inclusive) in advance.

Monthly Payments and Penalties

(11) The district shall pay monthly for all water delivered to it hereunder, or diverted by it from the Colorado River, in accordance with the rate herein in article ten (10) established. Payments shall be due on the first of the second month immediately succeeding the month in which water is delivered and/or diverted. If such charges are not paid when due, a penalty of one per centum (1%) of the amount unpaid shall be added thereto, and there-

after an additional penalty of one percentum (1%) of the amount unpaid shall be added on the first day of each calendar month during such delinquency.

Refusal of Water in Case of Default

(12) The United States reserves the right to refuse to deliver water to the district in the event of default for a period of more than twelve (12) months in any payment due or to become due the United States under this contract.

Inspection by the United States

(13) The Secretary or his representatives shall at all times have the right of ingress to and egress from all works of the district for the purpose of inspection, repairs, and maintenance of works of the United States, and for all other proper purposes. The Secretary or his representatives shall also have free access at all reasonable times to the books and records of the district relating to the diversion and distribution of water delivered to it hereunder with the right at any time during office hours to make copies of or from the same.

Disputes or Disagreements

(14) Disputes or disagreements as to the interpretation or performance of the provisions of this contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract, and the parties hereto agree to submit the matter to arbitration, the district shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect

three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within five (5) days after their first meeting, such arbitrators, not so elected, shall be named by the senior judge of the United States Circuit Court of Appeals for the ninth circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

Rules and Regulations

(15) There is reserved to the Secretary the right to prescribe and enforce rules and regulations governing the delivery and diversion of water hereunder. Such rules and regulations may be modified, revised, and/or extended from time to time after notice to the district and opportunity for it to be heard, as may be deemed proper, necessary, or desirable by the Secretary to carry out the true intent and meaning of the law and of this contract, or amendments hereof, or to protect the interests of the United States. The district hereby agrees that in the operation and maintenance of its diversion works and aqueduct, all such rules and regulations will be fully adhered to.

Agreement Subject to Colorado River Compact

(16) This contract is made upon the express condition and with the express understanding that all rights hereunder shall be subject to and controlled by the Colorado River compact, being the compact or agreement signed at Santa Fe, N. Mex., November 24, 1922, pursuant to act of Congress approved August 19, 1921, entitled "An act

to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," which compact was approved in section 13(a) of the Boulder Canyon project act.

Priority of Claims of the United States

(17) Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

Contingent upon Appropriations

(18) This contract is subject to appropriations being made by Congress from year to year of moneys sufficient to do the work provided for herein, and to there being sufficient moneys available in the Colorado River Dam fund to permit allotments to be made for the performance of such work. No liability shall accrue against the United States, its officers, agents, or employees, by reason of sufficient moneys not being so appropriated nor on account of there not being sufficient moneys in the Colorado River Dam fund to permit of said allotments. This agreement is also subject to the condition that if Congress fails to appropriate moneys for the commencement of construction work within five (5) years from and after execution hereof, or if for any other reason construction of Boulder Canyon Dam is not commenced within said time and thereafter prosecuted to completion with reasonable diligence, then and in such event either party hereto may terminate

its obligations hereunder upon one (1) year's written notice to the other party hereto.

Rights Reserved Under Section 3737 Revised Statutes

(19) All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in section 3737 of the Revised Statutes of the United States.

Remedies under Contract not Exclusive

(20) Nothing contained in this contract shall be construed as in any manner abridging, limiting, or depriving the United States of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have.

Interest in Contract not Transferable

(21) No interest in this agreement is transferable, and no sublease shall be made, by the district without the written consent of the Secretary, and any such attempted transfer or sublease shall cause this contract to become subject to annulment at the option of the United States.

Member of Congress Clause

(22) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

In Witness Whereof, the parties hereto have caused this contract to be executed the day and year first above written. (Executed in quadruplicate original.)

THE UNITED STATES OF AMERICA,

By Ray Lyman Wilbur

Secretary of the Interior.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA,

By W. P. Whitsett

Chairman of the Board of Directors.

Attest:

Northcutt Ely

Approved as to form:

W. B. Mathews,

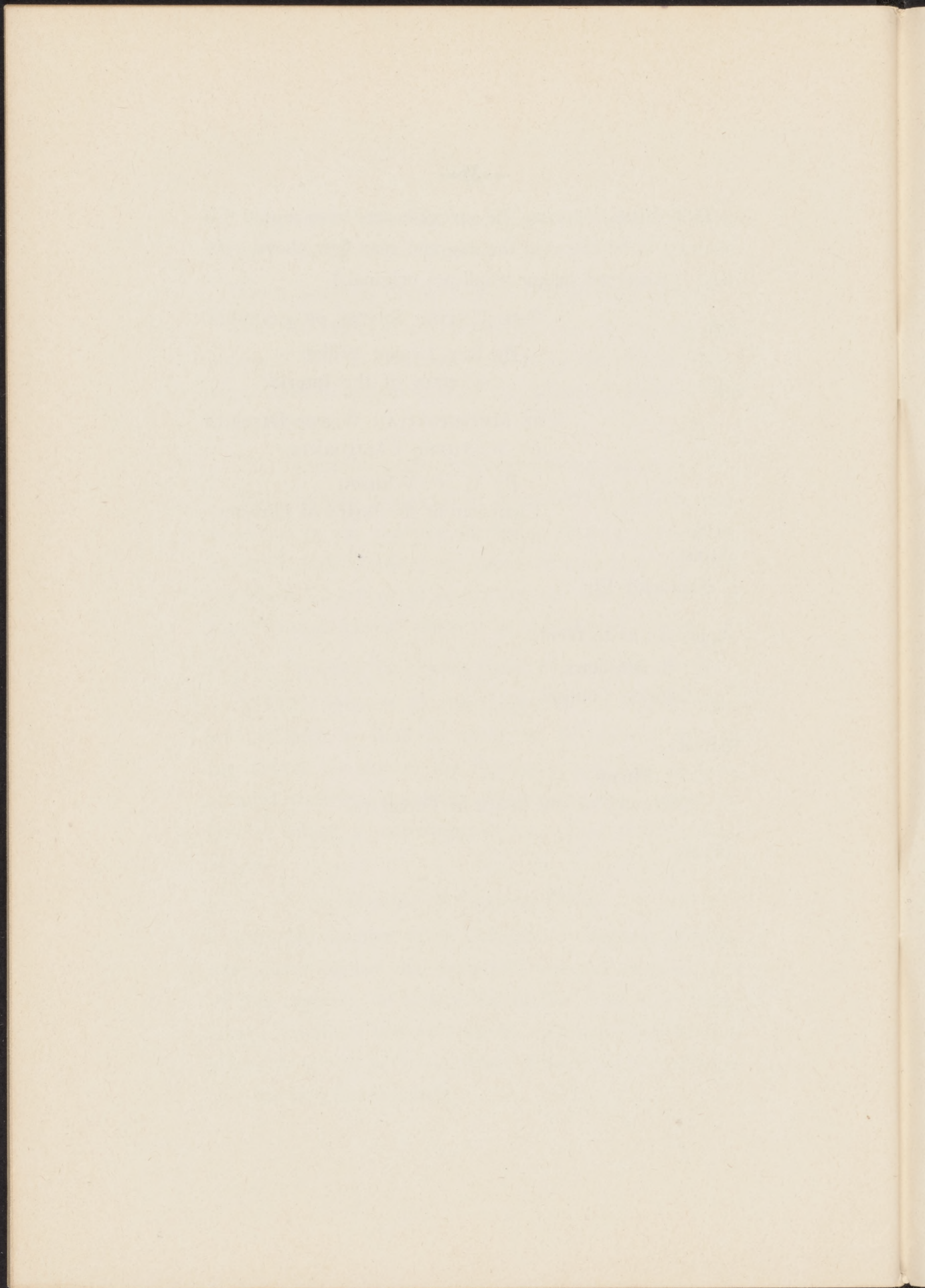
General Counsel.

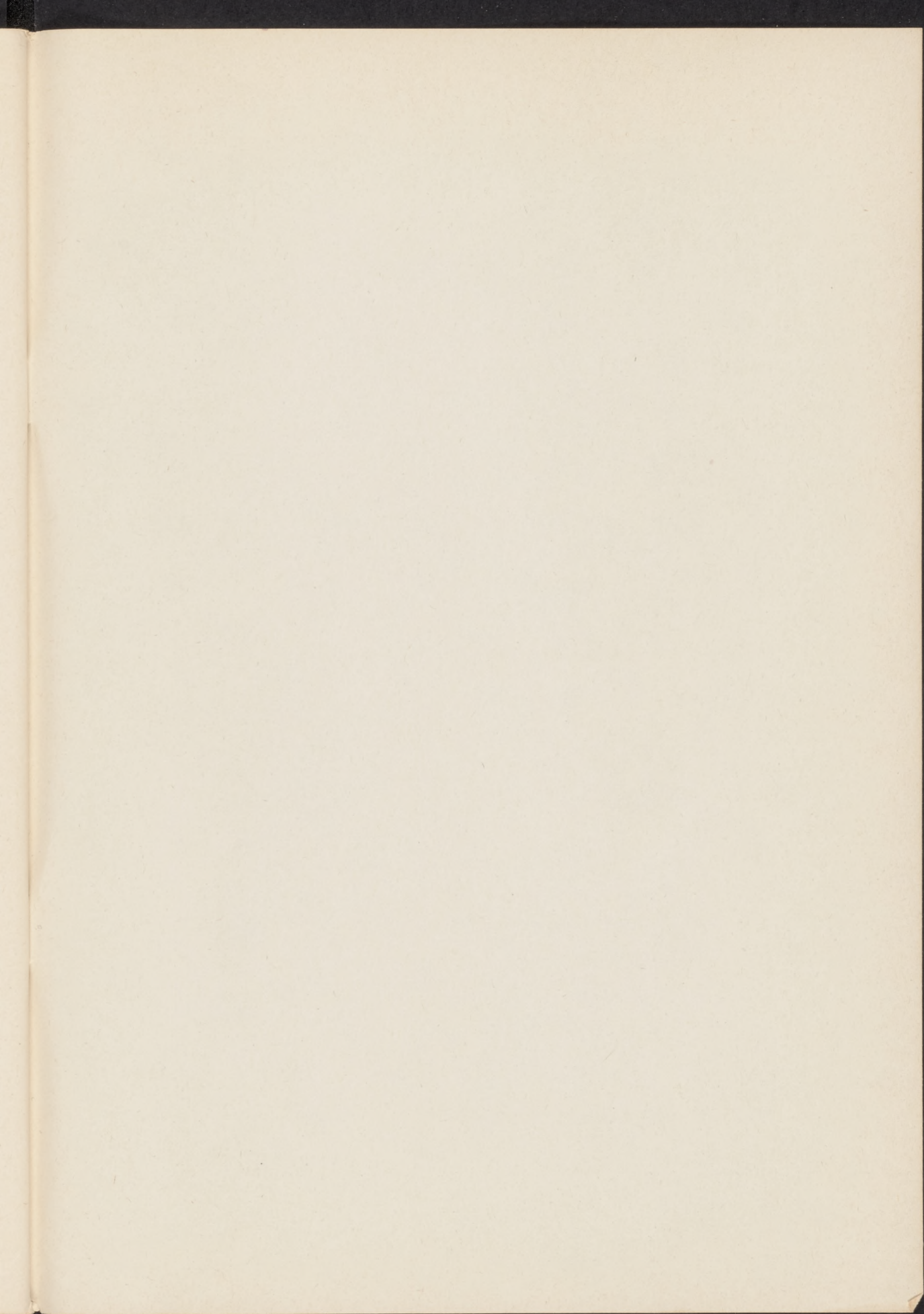
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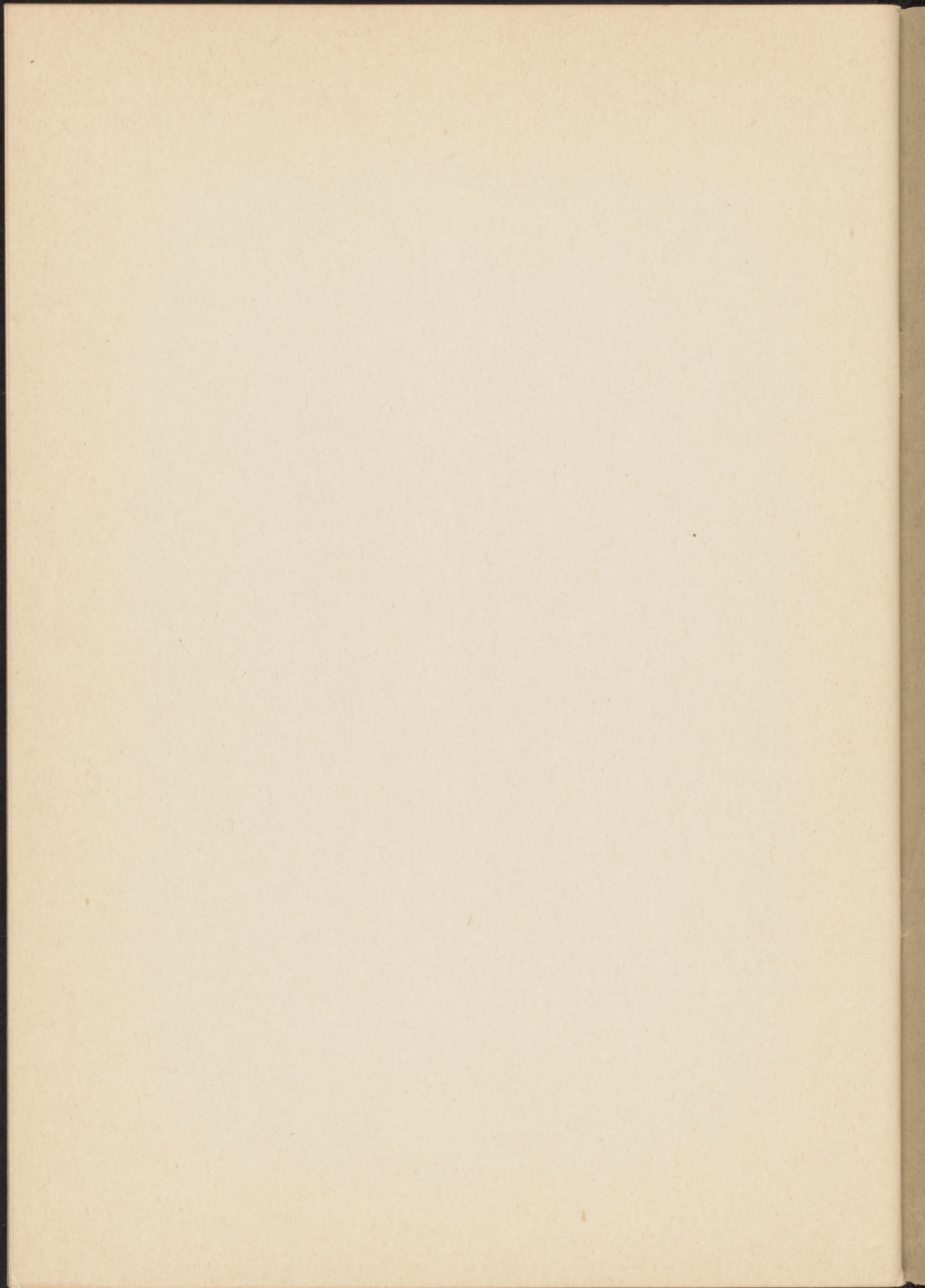
S. H. Finley,

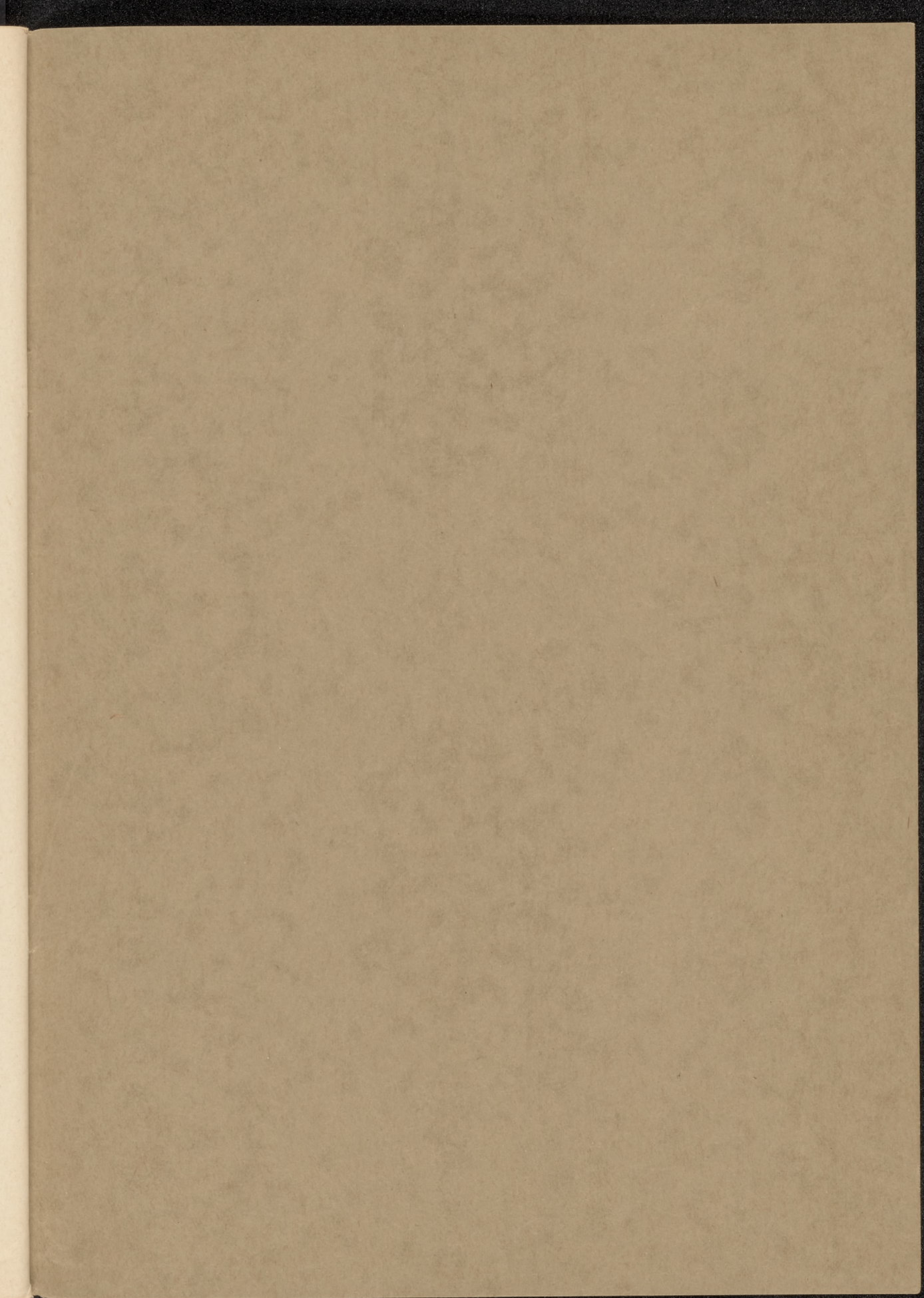
Secretary of the Board of Directors.

(Seal)









W.H.T. BP. 0112